

§ 9405.3

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under § 9405.3(d) to assist in the resolution of any disputes between the requester and the Commission.

FOIA request means to seek the release of records under 5 U.S.C. 552, as amended.

General Counsel means the General Counsel of the Commission or his or her designee.

Non-commercial scientific institution means an organization that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

Record means any information that would be a Commission record subject to the requirements of this part when maintained by the Commission in any format, including, but not limited to, an electronic format. Record includes information that is maintained for the Commission by an entity under Government contract for the purposes of records management.

Representative of the news media means any person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. As used in this paragraph, “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, web logs, and publishers of periodicals (but only in those instances in which these entities can qualify as disseminators of news, as defined in this paragraph) who make their products available for purchase or subscription by the general public. As used in this paragraph, a “web log” means a publicly available Web site, usually maintained by an individual, with regular entries of commentary, descriptions of events, or other material. A freelance journalist may be regarded as working for a news media entity and therefore, considered a representative of the news media if that person can demonstrate a solid basis for expecting publication by a news organization (whether or not the jour-

nalist is actually employed by the entity). A publication contract would present a solid basis for such an expectation. The Commission may also consider the past publication record of the requester in making this determination.

Requester is any person who submits a FOIA request to the Commission for release of a record under 5 U.S.C. 552, as amended.

Review means the process of examining a document located in response to a commercial use request to determine whether any portion of the document located is exempt from disclosure. Review also refers to processing any document for disclosure, *i.e.*, doing all that is necessary to excise exempt portions of the document or otherwise prepare the document for release. Review time includes time spent considering any formal objection to disclosure made by a business submitter requesting confidential treatment but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search means all time spent reviewing, manually or by automated means, Commission records for the purpose of locating those records that are responsive to a FOIA request, including, but not limited to, page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Search time does not include review of material to determine whether the material is exempt from disclosure.

§ 9405.3 Policy on disclosure of records.

(a) The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of individuals and other entities with respect to trade secrets and commercial or financial information entitled to privileged and confidential treatment, and the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.

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(b) All Commission records shall be available to the public unless they are specifically exempt under this part.

(c) In the interest of efficiency and economy, the Commission's preference is to furnish records to requesters in electronic format, when possible.

(d) To carry out this policy, the Commission shall designate a Chief Freedom of Information Act Officer (Chief FOIA Officer). The Chief FOIA Officer shall designate one or more Commission officials, as appropriate, as FOIA Public Liaison and/or as FOIA Officers. A FOIA Public Liaison shall serve as a supervisory official to whom a FOIA requester can raise questions about the service the FOIA requester has received. A FOIA Officer shall have the authority, subject to the direction and supervision of the Chief FOIA Officer, the requirements of this part, and the FOIA, to make decisions concerning disclosure of records to the public.

§ 9405.4 Availability of records.

(a) The FOIA and its provisions apply only to existing Commission records; the FOIA does not require the creation of new records.

(b) In accordance with 5 U.S.C. 552(a)(2), the Commission shall make the following materials available for public inspection and copying:

(1) Statements of policy and interpretation that have been adopted by the Commission but have not been published in the FEDERAL REGISTER;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Copies of all records, regardless of form or format, that have been released to any person under this paragraph and that, because of their nature or subject matter, the Commission determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(4) A general index of the records referred to in paragraph (b)(3) of this section.

(c) In accordance with 5 U.S.C. 552(a)(3), the Commission shall make available, upon proper request, all non-exempt Commission records, or portions of records, not previously made

public under 5 U.S.C. 552(a)(1) and (a)(2).

(d) The Commission shall maintain and make available current indexes and supplements providing identifying information regarding any matter issued, adopted, or promulgated after July 4, 1967. These indexes and supplements shall be published and made available on at least a quarterly basis for public distribution unless the Commission determines by Notice in the FEDERAL REGISTER that publication would be unnecessary, impracticable, or not feasible due to budgetary considerations. Nevertheless, copies of any index or supplement shall be made available upon request at a cost not to exceed the direct cost of duplication.

(e) If documents or files contain both disclosable and non-disclosable information, the non-disclosable information will be deleted and the disclosable information released, unless the disclosable portions cannot be reasonably segregated from the other portions in a manner which will allow meaningful information to be disclosed.

(f) All records created in the process of implementing provisions of 5 U.S.C. 552 will be maintained by the Commission in accordance with the authority granted by the National Archives and Records Service of the General Services Administration.

(g) The Commission encourages the public to explore the information available on the Commission's Web site, located at <http://www.eac.gov>.

§ 9405.5 Categories of exemptions.

(a) No FOIA requests under 5 U.S.C. 552 shall be denied release unless the record contains, or its disclosure would reveal, matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are, in fact, properly classified under such Executive Order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute, provided that such statute: